

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING MAP AMENDMENT REPORT (#FZC-21-09)
BRETT MILLER ET AL
JUNE 29, 2021

I. GENERAL INFORMATION

A. Project Description

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Brett Miller et al., for a zoning map amendment within the Southeast Rural Whitefish Zoning District. The proposed amendment, if approved, would change the zoning of the subject properties from 'SAG-10 Suburban Agricultural' to 'R-2.5 Rural Residential.'

B. Application Personnel

1. Owners

- a. Brett Miller
PO Box 4052
Whitefish, MT 59937
- b. Thomas F and Victoria Hoover
565 Armory Rd
Whitefish, MT 59937
- c. Sonia Frank
P O Box 2339
Napa, CA 94558
- d. Diana Woods Eisner Trust
288 Chinle Ct
Grand Junction, CO 81507
- e. Mark D. and Taunja Wagner
1010 Park Ave
Whitefish, MT 59937

2. Applicant

- a. Brett Miller
PO Box 4052
Whitefish, MT 59937

C. Process Overview

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11th Street West in Kalispell.

1. Land Use Advisory Committee/Council

This properties are not located within the jurisdiction of a Land Use Advisory Committee.

2. Planning Board

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on July 14, 2021 at 6:00 P.M. in the Second Floor Conference

Room of the South Campus Building located at 40 11th Street West in Kalispell, MT. Attendance for the public is also possible via a Zoom meeting. Information is available in the Planning Board agenda. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. This space is reserved for a summary of the Planning Board's discussion and recommendation.

3. Commission

In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment. Prior to the Commissioner's public hearing scheduled for August 3, 2021, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

II. PROPERTY CHARACTERISTICS

A. Subject Property Location and Legal Description

The properties are located at 655 Armory Road, 577 Armory Road, 565 Armory Road, 573 Armory Road, 679 Armory Road and 605 Armory Road, Whitefish, MT with a total acreage of approximately 55+ acres (see Figure 1). The properties are legally described as:

Tract 1 of Certificate of Survey No. 19749 (655 Armory Road/Portion of Lot 1B of Kings Whitetail Acres in Section 33, Township 31 North, Range 21 West)

Lot 1 of Kings Whitetail Acres in Section 33, Township 31 North, Range 21 West, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana (577 Armory Road)

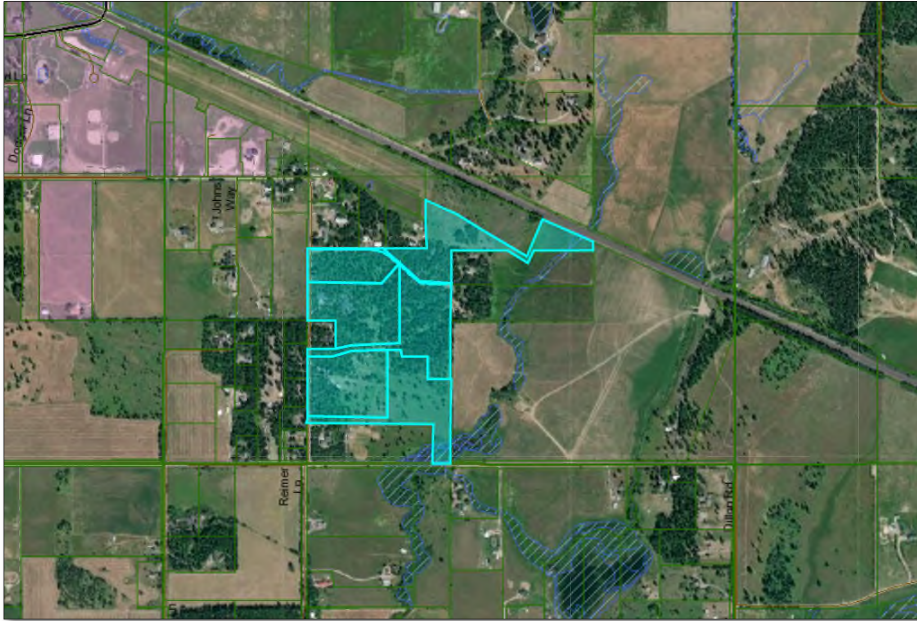
Tract A of Certificate of Survey No. 4132 (565 Armory Road/Tract 6CE in NW4SE4 & NE4SW4 in Section 33, Township 31 North, Range 21 West)

Lot 1 of Roy Subdivision in Section 33 Township 31 North, Range 21 West, according to the map or plat on file and of record in the Office of the Clerk and Recorder of Flathead County, Montana (573 Armory Road)

Tract 2 of Certificate of Survey No. 19749, located and being in the Southwest Quarter of Section 33, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana (679 Armory Road/Portion of Lot 1B of Kings Whitetail Acres)

Lot 2 of Kings Whitetail Acres in Section 33, Township 31 North, Range 21 West, according to the map or plat thereof on file and if record in the office of the County Clerk and Recorder of Flathead County, Montana (605 Armory Road)

Figure 1: Subject properties (highlighted in turquoise)

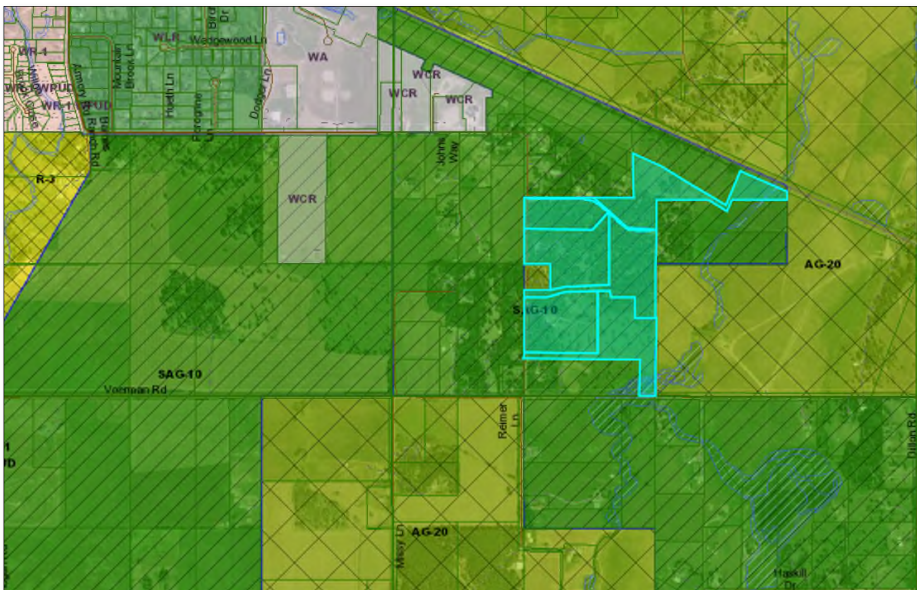


B. General Character of and Reason for Amendment

The subject properties contain six tracts of land. The properties are vacant or contain single family dwellings and accessory structures. As previously stated, the properties are currently zoned SAG-10 and the applicants are proposing to amend the zoning to R-2.5.

The application states the reason for the proposed zone change is, “*The owners of these tracts have all determined that at some time in the future they would like to subdivide a parcel of their lands for a family member and the SAG-10 would prohibit that from happening.*”

Figure 2: Current zoning on the subject properties (highlighted in turquoise)

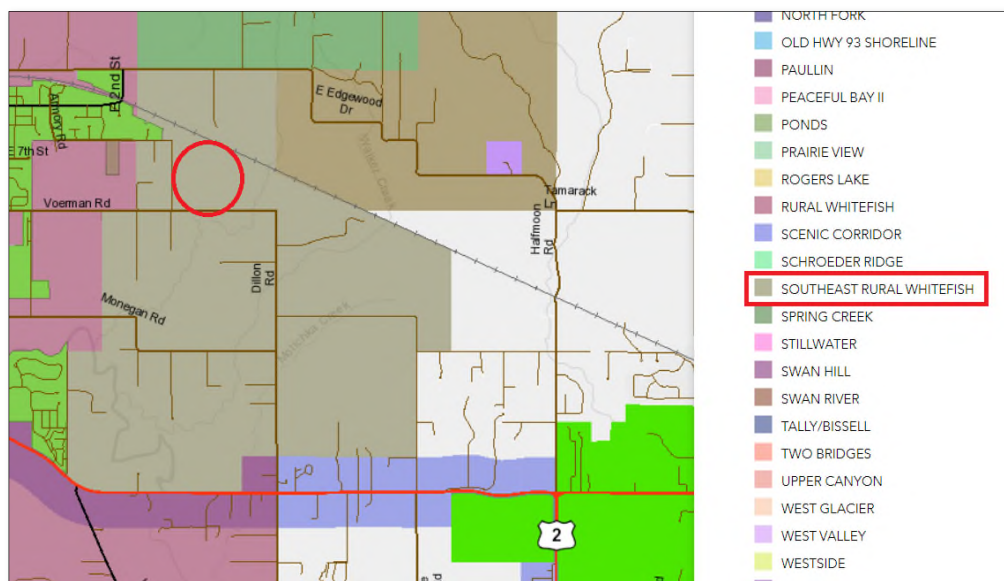


C. Adjacent Zoning and Character of the Overall Zoning District

The properties are located in the Southeast Rural Whitefish Zoning District. The character of the zoning district in the vicinity of the subject properties are suburban agricultural, agricultural, residential uses and the BNSF Railroad to the north. The properties are located on Armory Road and Voerman Road and approximately 0.14 miles southeast of the City of Whitefish.

Directly adjacent to the north, south and west is SAG-10, to the east is SAG-10 and AG-20, and to the northwest is Whitefish City WCR zoning.

Figure 3: Southeast Rural Whitefish Zoning District in drab olive (subject properties circled in red)



Public Services and Facilities

Sewer: N/A
Water: Whitefish City
Electricity: Flathead Electric Cooperative
Natural Gas: Northwestern Energy
Telephone: CenturyTel
Schools: Whitefish School District
Fire: Rural Whitefish Fire District
Police: Flathead County Sheriff

III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on May 11, 2021:
 - Flathead County Sheriff
 - Public Works/Flathead County Road Department
 - Flathead County Solid Waste
 - Flathead City-County Health Department (inter-office mail)
 - Flathead County Weeds & Parks Department
 - Bonneville Power Administration

- City of Whitefish Planning Department
 - Whitefish School District
 - Rural Whitefish Fire District
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
- Flathead Environmental Health Department
 - Comment: “No comment.”
 - Flathead County Road & Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.”
 - Flathead County Solid Waste District
 - Comment: “The District requests that all solid waste generated at the proposed location be hauled by a private licensed hauler. Republic Services is the licensed (PSC) Public Service Commission licensed hauler in this area.”

B. Public Comments

1. Adjacent properties notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject properties on June 23, 2021. Legal notice of the Planning Board public hearing on this application was published in the June 27, 2021 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject properties and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for July 14, 2021 and/or the Commissioner’s Public Hearing scheduled for August 3, 2021. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

IV. EVALUATION OF PROPOSED AMENDMENT

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

A. Build-Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.09 of the Flathead County Zoning Regulations (FCZR), R-2.5 is defined ‘*A district intended for rural, primarily residential areas where larger, estate-type lot sizes are appropriate and agricultural/silvicultural/horticultural operations are a decreasingly viable land use. The use of this district is appropriate in transition areas adjacent to and between higher-density Residential (R) and lower-density Suburban Agriculture (SAG) zones. This district is not appropriate in areas primarily surrounded by lower-density SAG and AG zones and/or areas adjacent to significant ongoing agricultural/silvicultural /horticultural and/or extractive industry operations. Furthermore, public facilities should be appropriately developed to accommodate the density and land uses of this designation. This includes paved roads. It is intended that no uses be permitted in this district that will tend to devalue properties for residential purposes or interfere with the health, safety, order or general welfare of persons residing therein.*’

The SAG-10 designation is defined in Section 3.07 FCZR as, ‘*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate type residential development.*’

The permitted uses and conditional uses for the SAG-10 and the R-2.5 zoning are very similar. The amendment would reduce the number of permitted uses from 20 to 15 and the number of conditional uses from 24 to 23. Public stable is the only SAG-10 permitted use listed as a conditional use in the proposed R-2.5 zone and there are two conditional uses within the R-2.5 zone not allowed in SAG-10 (Radio and television broadcast station and Cluster development dwellings).

The permitted and conditional uses allowed within the SAG-10 but not allowed in R-2.5 are:

- Class B manufactured home.
- Cluster housing
- Dairy products processing, bottling, and distribution
- Ranch employee housing
- Riding academy, rodeo arena
- Animal hospital, veterinary clinic.
- Contractor’s storage yard.
- Extractive industry.

- Kennel, commercial.
- Recreational facility.

The bulk and dimensional requirements within the current and proposed zoning require a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-10 the permitted lot coverage is 20% and a maximum height of 35 feet and for R-2.5 the permitted lot coverage is 25% and maximum height of 35 feet.

The existing zoning requires a minimum lot area of 10 acres. Since the six subject properties total approximately 55 acres, zero additional lots could be created. The proposed zoning requires a minimum lot area of 2.5 acres therefore approximately 16 additional lots could be created (22 lots with 55 acres – 6 original lots). The total of 16 lots is approximate as easements need to be taken into consideration for possible internal subdivision roads if the properties were subdivided. The bulk and dimensional requirements are similar but the amendment would reduce the number of permitted uses and conditional uses.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject properties as ‘Suburban Agriculture.’ The proposed ‘R-2.5 Rural Residential’ zoning classification would appear to agree with the current designations. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.” Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

The introduction of Chapter 1 states, *‘High density residential development has the potential to change the character of a rural area and create safety and health hazards if not properly guided. Similarly, low density development in areas well suited for development can be an inefficient use of land resources.’*

The properties are located in a rural area of the county that is a combination of properties which are within city limits or under county jurisdiction. The properties directly to the west are within the jurisdiction of Whitefish zoned WLR. To the south is zoned county I-2 and to the north and east is SAG-10. It is a combination of open space and wooded acreage.

Part 4 of Chapter 2 the Growth Policy states, *‘It is clear that agriculture plays a vital role in both the economy and culture of Flathead County. The custom and culture of agriculture in Flathead County is one of the features that is contributing to rapid growth and development. Lands that have traditionally been used for agriculture are being converted increasingly to residential uses as residents seek rural living.’* The subject properties are not currently being used for agriculture.

The introduction to Part 7 of Chapter 2 states, *‘The density of residential developments is an issue raised throughout the public involvement process [...] Residential development, including the subdivision of land, is not inherently problematic. However, residential development at a density that is not compatible with existing local services and neighborhood character is likely to be contentious.’* It goes on to say that, *‘Capacity is based on the size and quality of the road, and once the capacity is exceeded, public safety suffers. Low density residential land uses on low capacity roads are a match, but medium or high density land uses on low capacity roads create problems.’*

Part 7 of Chapter 2 also states, *‘Appropriate densities can be dictated by the land itself. Areas with shallow groundwater or limited access to groundwater are more suited to low density residential land uses. High density residential land uses should be avoided in areas of steep slopes due to the risk of rockslides, mudslides, severe erosion, earthquakes, and avalanches. Although it is easy for a community to gradually forget about the devastating impacts of floods, floodplains with less than a 1% chance of flooding each year (areas between the 100 and 500-year floodplain) are still sure to flood again.’*

The properties are located on Armory Road a paved two lane public road within a 60 foot easement, capable of supporting the capacity of 16 or less additional single family homes. The total of 16 lots is approximate as easements need to be taken into consideration for possible internal subdivision roads if the properties were subdivided. The properties are located within 0.14 miles to properties zoned Whitefish WCR which has a density of 2.5 units per acre. The properties are not located within the floodplain with the exception of the southernmost portion of the property located along Voerman Road and the R-2.5 zoning is not generally considered high density.

The following is a consideration of goals and policies which appear to be applicable to the proposed zone change:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
 - The amendment would allow the owner to subdivide but would also allow for the continuation of the existing use on the properties.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
 - The R-2.5 designation would allow for densities of 1 dwelling units per 2.5 acres which would likely not require public services because 2.5 acres lots can be serviced by septic systems and wells.
- **P.8.2** – *Identify required criteria for various densities that support the seven elements of the public’s vision outlined in Chapter 1.* The Seven Elements of the Public’s Vision include:
 - **Protect the Views**
The vision states, ‘*One characteristic that residents of Flathead County cherish is the view. Views of mountains, lakes, forests, wildlife, and open spaces are cited as characteristics residents of Flathead County would not change. “Scenic resources” are valued throughout the county regardless of age, gender or location.*’ The proposed zone change if approved would likely have minimal impact on views because it is located with 0.14 mile to similarly zoned City of Whitefish properties with similar densities.
 - **Promote a Diverse Economy**
The vision states, ‘*The cost of living and home ownership should be affordable to the median income.*’ The proposed zone change if approved could allow for additional single family residential adding to the housing supply which has the potential to make homeownership more affordable because the R-2.5 zone would continue to allow for accessory dwelling units (ADU) and single family dwellings which have the potential to add affordable rental units to the county.
 - **Manage Transportation**
Vision 3 discusses managing traffic flow through land development patterns; this report contains discussion regarding the proposals impacts on traffic below.
 - **Maintain the Identity of Rural Communities**
The vision states, ‘*Preventing communities from growing together and losing their unique identities was another concern of many scoping meeting participants. The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities.*’ The properties are located on the east edge of Whitefish several miles from other communities and would not allow for any commercial development.

- *Protect Access to and Interaction with Parks and Recreation*
This report contains a discussion on parks and recreation below.
- *Properly Manage and Protect the Natural and Human Environment*
The vision states, ‘Air and water quality were mentioned frequently as well as co-habitation of people and wildlife being qualities that make Flathead County unique and desirable. Many residents expressed a desire to protect the lakes, rivers, ponds, groundwater and air for future generations.’ The southernmost property which is adjacent to Voerman Road does contain a small amount of both wetland and floodplain adjacent to the road however the impact by this proposal would likely be minimal. As part of the lot is approximately 10 acres and given the proposed minimum lot size of 2.5 acres, there is more than enough acreage to create a lot with a buildable area outside the wetland/floodplain and the area will need to be clearly marked on the Certificate of Survey to avoid development in that area. If development were proposed in that area permits from both the Army Corp of Engineers and the Flathead County Planning and Zoning would be necessary. The increase in residential density is likely to have a minimal impact on air quality.
- *Preserve the Rights of Private Property Owners.*
As previously stated, the amendment would allow the owner to subdivide the properties, but would also allow for the continuation of a single family dwelling on the properties.
- ❖ **G.15** – *Promote a diverse demographic of residents.*
 - **P.15.1** – *Encourage housing, employment, education and recreation to attract, support and maintain young families.*
 - The proposed zone would allow for single family dwelling, manufactured homes and accessory dwelling units as permitted uses, all of which has the potential to make housing more affordable for young families.
- ❖ **G.16** – *Safe housing that is available, accessible, and affordable for all sectors of the population.*
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
 - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
 - Armory Road a paved two lane public road within a 60 foot easement and is not classified as either an arterial or collector road.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
 - This report contains discussion on the proposal’s potential burden on schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - This report contains discussion on the adequacy of emergency service below.

- ❖ **G.41** –*Promote the preservation of critical fish and wildlife habitat and preserve the area’s unique outdoor amenities and quality of life.*
 - **P.41.2** – *Discourage unmitigated development in areas identified as critical wildlife habitat.*
 - Given the properties close proximity to the City of Whitefish and the fact the neighboring properties are already used for residential purposes, impacts on wildlife would likely be minimal.

The applicant states, *“The Owens property is located within the boundary of the Flathead County Growth Policy. The Growth Policy Map identifies the property as “Suburban Agriculture”. The Flathead County Growth Policy Map is not a future land use designation map that is traditionally used with a Growth Policy but an existing land use map that generally depicts the existing zoning categories as its base. The existing SAG-10 (Suburban Agriculture) designation is a land use category that is consistent with and generally conforms to the “Suburban Agricultural” designation and the proposed R-2.5 is a transition from Agricultural property to Residential designations.”*

Finding #1: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-2.5 zone would allow for manufactured homes, single family homes and ADUs which has the potential to allow for affordable housing options, the properties are located adjacent to Whitefish WCR zoning and impacts on wildlife would likely be minimal.

2. Whether the proposed map amendment is designed to:

a. Secure safety from fire and other dangers;

The subject properties are located within the Rural Whitefish Fire District and the nearest fire and emergency response center is located approximately 2.4 road miles west of the properties on Flathead Avenue in Whitefish. The Whitefish Fire Department would respond in the event of a fire or medical emergency. The Whitefish Fire Department did not provide comments on this proposal. The subject properties are located within the Wildland Urban Interface (WUI) and are within a medium high county wide priority area however they are not in a fire district priority area.

The subject properties are located on Armory Road a paved two lane public road within a 60 foot easement. The road appears adequate to provide ingress and egress for emergency services.

According to the application, *“The subject property is within the Whitefish Fire District. The Fire District has a Station off Baker approximately 2.6 miles from the property. The property is located within the Wildland Urban Interface and the property is a mix of forest and field. The property is not mapped with floodplain.”*

FEMA FIRM Panel 30029C1095J shows the majority of properties as located within an unshaded Zone X an area determined to be outside the 0.2% annual chance floodplain. The exception is a small area shown as Zone A which is a Special Flood Hazard Area without Base Flood Elevation on the southernmost

section of the properties which are along Voerman Road. There is a low chance of flooding on the subject properties.

Finding #2: The proposed map amendment will not impact safety from fire and other danger because the properties are located on a paved two lane public road within a 60 foot easement, are located approximately 2.4 miles from the nearest fire station, have minimal floodplain on the southernmost property and the properties location in the WUI can be mitigated following firewise practices with statements on the final plat.

b. Promote public health, public safety, and general welfare;

The application states, *“The property has direct access to Armory Road along the western side of the subject properties. Armory Road is a paved County Road that is also maintained by Flathead County. The Flathead County Sheriff’s Office provides police protection and the Whitefish Fire District provides fire and ambulance service to the existing and proposed residences.*

“The proposed R-2.5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use restrictions. The primary difference in the zoning districts is the density with the SAG-10 allowing one dwelling per 2.5 acres. The land uses are nearly identical with the exception that SAG-10 allows ranch housing, public stable and Class B manufactured homes as a permitted use while the R-2.5 does not. The differences in the Conditional Use category are that the SAG-10 provides for: animal hospitals / veterinary clinics, extractive industries, kennels, and recreational facilities which the R-2.5 does not. The maximum density on the 55+ acres with the R-2.5 are 22 lots while currently there are six lots between five and ten acres each. The proposed zoning designations will continue to promote the health, safety and general welfare of the public.” The properties are located on Armory Road, which appears adequate to provide access for emergency services which would help to ensure adequate public health and safety. As previously stated, the Whitefish Fire Department would respond in the event of a fire or medical emergency. The Flathead County Sheriff’s Department currently provides and will continue to provide police services to the subject properties. The Sheriff’s Department also has in place an inter-local agreement with the Whitefish Police Department for mutual assistance.

The permitted uses and conditional uses for the SAG-10 and the R-2.5 zoning are similar. The amendment would reduce the number of permitted uses from 20 to 15 and the number of conditional uses from 24 to 23. Because of the similarity in uses the impacts on public health, public safety and general welfare should be minimal.

Finding #3: The proposed zoning map amendment would likely not have a negative impact on public health, public safety and general welfare because the properties are served by the Whitefish Fire Department and the Flathead County Sheriff, the properties are accessed via a paved road and the R-2.5 zoning would allow for similar uses to what already exist in the area.

c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Primary access to the properties are currently off Armory Road. Armory Road a pave two lane public road within a 60 foot easement. The Flathead Road and Bridge Department did not have comments on this request.

The most recent traffic count available from the Flathead County Road and Bridge Department in 2019 for Armory Road north of Voerman Road is 704 ADT. Using standard trip generation, residential uses generate traffic at typically 10 vehicle trips per dwelling for single family. Approximately 16 or less additional single family lots could be created, which would generate up to 160 average daily trips (ADT) for potential increase of 22.7% on Armory Road.

The application states, *“The property has access to Armory Road which is a paved county-maintained road. The proposed zone change will allow additional lots to be created but those divisions would be subject to wastewater and stormwater analysis. The property is within the Whitefish School District #44 for K-12 grades. In general, larger lots, like those proposed, require less park land than urban densities with small yard areas.”*

The applicant will be required to work with the Flathead City-County Health Department to develop water and sewer systems to meet the needs of any future development. The Environmental Health Department had no comments for the zone change.

While the subject properties are located within the Whitefish School District the school district did not provide comments on this proposal. The proposed zoning has the potential to generate school children but are not likely to impact either school. According to census data for Flathead County, the average household size is 2.46 persons and approximately 16.5% of the population is between the ages of 5-18 years. The proposal has the potential to generate up to 16 additional dwellings and therefore could generate approximately seven school age children.

The development of lots 2.5 acres in size would likely trigger parkland requirements during subdivision review. There are many parks, natural areas, and recreational opportunities within a short drive and the properties are not likely to effect the adequate provision of parkland.

Finding #4: The proposed amendment would facilitate the adequate provision of transportation water, sewerage, schools, parks, and other public requirements because future growth could lead to an increase in traffic on Armory Road of 22.7% at the most, further division of land on the subject properties would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, there would be minimal impact on parks and the proposal has the potential to generate 7 school age children.

3. In evaluating the proposed map amendment, consideration shall be given to:

a. The reasonable provision of adequate light and air;

The application states, *“The proposed R-2.5 zoning designation has a lot coverage of 25% and setbacks of 20 feet from all property borders. The proposed zoning designation should provide adequate light and air.”*

As the applicant states the bulk and dimensional requirements, which includes setbacks, have been established to provide for a reasonable provision of light and air. The minimum lot area for the proposed R-2.5 zone is 2.5 acres and the minimum lot area for the existing SAG-10 zone is 10 acres. The density allowed within R-2.5 would be greater than the density allowed within the current SAG-10 zone. The maximum building height within the proposed R-2.5 zone is 35 feet for a principal structure and 18 feet for an accessory structure and the maximum height for the existing SAG-10 zone is 35 feet for both a principal and accessory structure. The permitted lot coverage is 20% in the SAG-10 zone and 25% in the proposed R-2.5 zone.

The setback requirements are the same in the proposed R-2.5 zone as the existing zoning. The required setback from the boundary line is 20 feet from all properties boundaries for the principal structure, 20 feet from the front and side corner on accessory structures and 5 feet from the rear and side on accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as properties boundaries and an additional 20 foot setback is required from county roads classified as collector and arterials.

The setbacks for the proposed zone are the same as those in the existing SAG-10 zoning while a greater area of a lot can be covered in the R-2.5 zone. The bulk and dimensional requirements for the R-2.5 designation have been established to provide for a reasonable provision of light and air.

Finding #5: The proposed zoning map amendment would provide adequate light and air to the subject properties because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-2.5 designation.

b. The effect on motorized and non-motorized transportation systems;

Primary accesses to the properties are currently off Armory Road. Armory Road a paved two lane public road within a 60 foot easement. The Flathead County Road and Bridge Department did not have a comment on this request. Comment from the applicant states, *"The subject parcel has direct access to Armory Road which is a paved County maintained road within a 60-foot road right-of-way that connects to other County Roads in the area. Several of the landowners who are part of this application have no immediate plans to subdivide they just want ot have the zoning in place in case they do want to create a parcel or two."*

As previously stated, the most recent traffic count available from the Flathead County Road and Bridge Department in 2019 for Armory Road north of Voerman Road is 704 ADT. Using standard trip generation, residential uses generate traffic at typically 10 vehicle trips per dwelling for single family. Approximately 16 or less additional single family lots could be created, which would generate up to 160 average daily trips (ADT) for a potential increase of 22.7% on Armory Road.

The Flathead County Trails Plan does not identify Armory Road as a proposed recreational bike/pedestrian trail.

Finding #6: Effects on motorized and non-motorized transportation systems will be minimal because the Flathead County Road and Bridge Department had no concerns with this proposal, the traffic generated by the proposed zoning would be up to a 22.7% increase on Armory Road and future development of the properties would not require an easements for pedestrian/bike trails.

c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The application states, *“The subject property is located 1000 feet from the City Limits of Whitefish. Those properties in the City Limits are zoned WCR. The WCR and County R-2.5 both have a 2.5-acre density provision and very similar use allowances therefore the proposed change is compatible with the City’s zoning northwest along Armory Road.”*

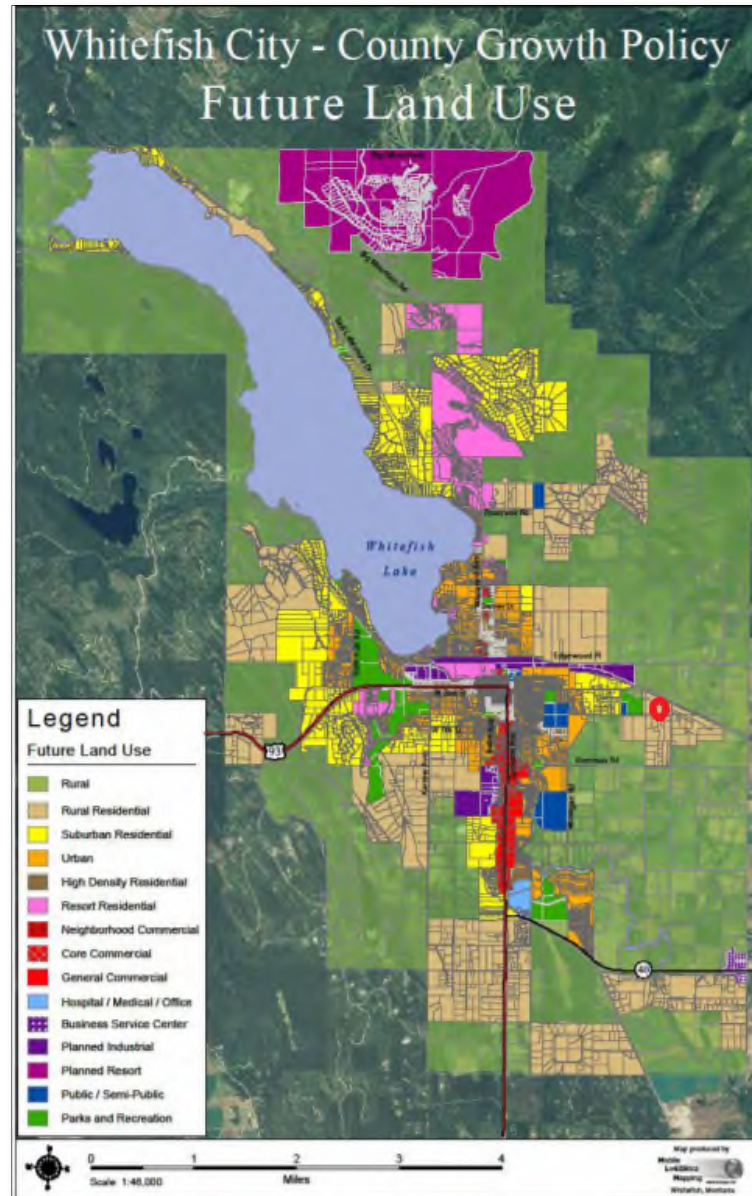
Whitefish is the nearest municipality to the subject properties and is located adjacent to the properties on the west. The properties are located within the boundary of the Whitefish Growth Policy and are indicated on the Whitefish City – County Growth Policy Future Land Use Map. (See Figure 4). An agency referral was sent to the Whitefish Planning Department on May 11, 2021, however staff has not received any comments from the City as of the date of this report.

The Whitefish Growth Policy Planning Area Map designated the properties as “Rural Residential.” According to the Whitefish Growth Policy the “Rural Residential” definition states, *“The rural residential designation is intended primarily for areas that are already divided into lots of 2 ½ to 10 acres in size. Its intent is to preserve rural character while allowing existing large-lot residential areas to continue without becoming non-conforming as to minimum lot size. Applicable zoning districts include WCR and WA-10. Rural residential is not seen as a desirable future development option, and this Growth Policy does not advocate designating additional areas for rural residential beyond what is already depicted on the Future Land Use Map.”*

The properties located 0.14 miles to the northwest have a Whitefish City zoning WCR designation and are designated on the Planning Area Map as ‘Rural Residential’. The proposed R-2.5 zoning coincides with the definition of ‘Rural Residential’ as it would allow for lots of 2 ½ acres. It appears the proposed zoning designation would be compatible with urban growth in the vicinity of Whitefish.

Finding #7: The properties are located within the extent of the City of Whitefish Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Whitefish because no comments were received from the City of Whitefish to indicate concern and the proposed zone is comparable to the existing Whitefish WCR zoning designation within 0.14 miles of the properties.

Figure 4: City of Whitefish Growth Policy Future Land Use Map (Subject properties circled red)



- d. **The character of the district(s) and its peculiar suitability for particular uses;** According to the application, *“The subject parcel abuts County Zoning Districts SAG-10 and AG-20 zoning designation but is approximately 1000-feet from the City’s WCR designations. The proposed zoning fits the character of the District and also provides a transition between the more urban densities of the City and the larger suburban and agricultural designations to the east.”*

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is

different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. ***The zoning allows a use that differs significantly from the prevailing use in the area.***

The application states, “As stated previously, the uses classification of the existing SAG-10 and the Proposed R-2.5 are very similar with both limiting use primarily to single family and agricultural uses. The only real difference between the two designations is the density and the density matches that of the City only 1000 feet from the subject proposal.”

The subject properties are located within 0.14 miles of similar residential zoning of the City of Whitefish WCR and adjacent to SAG-10 on three sides along with AG-20 to the east. The proposed R-2.5 zoning would allow for agricultural and single family residential on 2.5 acre lots, similar to what exists in the area presently.

The uses to the north are larger lot residential and industrial with the railroad, to the west is open and residential while the south and east have large lot residential and large open lots. The size of lots zoned SAG-10 in the area range from 0.67 acres across Armory Road to the west to 4.6 acres adjacent to the subject properties to the north. The proposed R-2.5 zone is designed as a transition zone between higher density residential areas and lower density suburban agricultural zones, per Section 3.43.010 FCZR. The uses allowed in the R-2.5 zone would not differ significantly from existing uses in the area or future uses on properties that have been annexed into the City of Whitefish.

ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

According to the application, “The proposed zone change encompasses 55 acres and five land owners. The nearby WCR designations covers another 30 acres. The proposed zone change will allow the applicant to enjoy the same or similar zoning as some of the nearby neighbors.”

The properties are in close proximity to Whitefish WCR which has a minimum lot size of 2.5 acres. The R-2.5 has a minimum lot size of 2.5 acres. The proposal would change the zoning on approximately 55 acres to R-2.5 which is more compatible to the lots sizes permitted in the nearest Whitefish WCR zoning designation.

iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

This zoning map amendment would apply to six tracts for the benefit of five owners. As a result, this zoning map amendment does not appear to be at the expense of the surrounding landowners. As previously stated the uses allowed within the proposed zone are similar to the existing uses on the properties within the vicinity. Many of the land uses listed as permitted uses in the proposed R-

2.5 zone exist in the area of the subject properties, or would not be out of character with the existing uses and to the west is Whitefish City zoning WCR which has comparable minimum lot size requirements.

Concerning this issue, the application states, *“The proposed zone change includes five landowners and is near some WCR zoning which has another seven landowners. Again, the only real difference between the R-2.5 and the neighboring SAG-10 zoning designations are the densities as the land uses are nearly identical.”*

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #8: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would be comparable to the existing WCR Whitefish zoning to the west of the subject properties, is of a similar lot size to existing zoning in the area and would allow for similar uses to what exists in the area.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The subject properties are located within the Southeast Rural Whitefish Zoning District and adjacent to residential and suburban agricultural zones (see Figure 2). The application states, *“The permitted and conditionally permitted uses of the proposed zoning designation of R-2.5 are nearly identical to that of the existing SAG-10 zoning classification. The proposed R-2.5 matches that of the City of Whitefish WCR zoning which is about a 1000 feet northwest of the applicant’s holdings. The proposed zoning does give due consideration to the jurisdiction and the associated land uses.”*

Previous sections of this report have discussed the differences between permitted and conditional uses in the existing SAG-10 zoning and the proposed R-2.5 zoning. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed R-2.5 zone exist in the vicinity of the subject properties such as single family residential. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area. The uses allowed in the proposed zoning are similar to the existing uses.

Finding #9: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-2.5 designation allows for similar uses to the neighboring suburban agricultural and residential zoning, the area is currently rural residential and agricultural which is in line with the proposed R-2.5 zone.

4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

According to the application, *“The City Limits of Whitefish is located approximately 1000 feet northwest of the subject property and those City properties are zoned WCR which has the same density and land uses as the proposed zoning.”* As previously stated, the subject properties are included within the Whitefish Growth Policy Future Land Use Map. The Whitefish Growth Policy Future Land Use Map designated the properties as “Rural Residential.”

The nearest City of Whitefish zoning is WCR located 0.14 miles to the northwest of the subject properties. The proposed R-2.5 is more compatible with the City residential zones than the existing SAG-10 based on lot size and uses allowed. The City has a zoning designation which is based on larger lot sizes (WA – Agricultural District) however it would not apply to this properties because the minimum lot size is 15 acres. WCR – Country Residential District has a minimum lot size of 2.5 acres is more compatible because the uses are similar and the minimum lot size is similar to the proposed R-2.5. The amendment appears to be, as nearly as possible, compatible with the zoning ordinance of the City of Whitefish.

Finding #10: The proposed map amendment of R-2.5 appears to be compatible with the zoning ordinance of Whitefish because the City has WCR Country Residential District which accommodates 2.5 acres and is more compatible than the existing SAG-10 zoning.

I. SUMMARY OF FINDINGS

1. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-2.5 zone would allow for manufactured homes, single family homes and ADUs which has the potential to allow for affordable housing options, the properties are located adjacent to Whitefish WCR zoning and impacts on wildlife would likely be minimal.
2. The proposed map amendment will not impact safety from fire and other danger because the properties are located on a paved two lane public road within a 60 foot easement, are located approximately 2.4 miles from the nearest fire station, have minimal floodplain on the southernmost property and the properties location in the WUI can be mitigated following firewise practices with statements on the final plat.
3. The proposed zoning map amendment would likely not have a negative impact on public health, public safety and general welfare because the properties are served by the Whitefish Fire Department and the Flathead County Sheriff, the properties are accessed via a paved road and the R-2.5 zoning would allow for similar uses to what already exist in the area.
4. The proposed amendment would facilitate the adequate provision of transportation water, sewerage, schools, parks, and other public requirements because future growth could lead to an increase in traffic on Armory Road of 22.7% at the most, further division of land on the subject properties would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, there would be

minimal impact on parks and the proposal has the potential to generate 7 school age children.

5. The proposed zoning map amendment would provide adequate light and air to the subject properties because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-2.5 designation.
6. Effects on motorized and non-motorized transportation systems will be minimal because the Flathead County Road and Bridge Department had no concerns with this proposal, the traffic generated by the proposed zoning would be up to a 22.7% increase on Armory Road and future development of the properties would not require an easements for pedestrian/bike trails.
7. The properties are located within the extent of the City of Whitefish Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Whitefish because no comments were received from the City of Whitefish to indicate concern and the proposed zone is comparable to the existing Whitefish WCR zoning designation within 0.14 miles of the properties.
8. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would comparable to the existing WCR Whitefish zoning to the west of the subject properties, is of a similar lot size to existing zoning in the area and would allow for similar uses to what exists in the area.
9. This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-2.5 designation allows for similar uses to the neighboring suburban agricultural and residential zoning, the area is currently rural residential and agricultural which is in line with the proposed R-2.5 zone.
10. The proposed map amendment of R-2.5 appears to be compatible with the zoning ordinance of Whitefish because the City has WCR Country Residential District which accommodates 2.5 acres and is more compatible than the existing SAG-10 zoning.

II. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: DV